Amy Klobuchar

U.S. Senator for Minnesota

Chairwoman Klobuchar Opens Antitrust Hearing on App Stores Emphasizing Need to Ensure Competition in Digital Economy

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Klobuchar: "Just because a company creates a successful, innovative business that consumers like, doesn't give it a free pass to harm competition or ignore our antitrust laws"

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WASHINGTON – At today's Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights hearing on app stores and mobile app competition, U.S. Senator Amy Klobuchar (D-MN), Chairwoman of the Subcommittee, emphasized the need to assess competition within the "app economy," calling attention to Apple and Google's dominance in the market.

Witnesses at the hearing include:

- Kyle Andeer – Chief Compliance Officer, Apple
- Wilson White – Senior Director on the Government Affairs & Public Policy, Google
- Dr. Mark Cooper – Director of Research, Consumer Federation of America
- Horacio Gutierrez – Head of Global Affairs & Chief Legal Officer, Spotify
- Kirsten Daru – General Counsel, Tile
- Jared Sine – Chief Legal Officer & Secretary, Match Group

"…today, we will focus on how Apple and Google can use their power to 1. exclude or suppress apps that compete with their own products, and 2. charge excessive fees that affect competition in the app economy. As I've said before, just because a company creates a successful, innovative business that consumers like, doesn't give it a free pass to harm competition or ignore our antitrust laws," Klobuchar said in her opening remarks.

The full transcript of remarks as given below and video available for TV download HERE and online viewing HERE.

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Well good afternoon everyone. Sorry we are a little late but we had a vote this afternoon, and thank you, Senator Lee, for working with me and our two staffs together on this hearing. I call to order this hearing of the Subcommittee on Competition Policy, Antitrust, and Consumer Rights. The title of this hearing is "Antitrust Applied: Examining Competition in App Stores."

I welcome our witnesses.

In our hearing, we're going to examine the scope of America's monopoly problem and discuss what should be done to protect and foster competition in the twenty-first century. Today, we will focus on competition in what we call the "app economy."

We will discuss competition relating to the mobile applications that run on our smartphones, including revenues generated through app sales and in-app purchases, as well as app-related ad revenues and sales of devices designed to run apps.

In 2020, global app revenues have been estimated at more than $580 billion—and they are projected to grow to more than $900 billion by 2023. In just the first three months of this year, users are estimated to have spent $21 billion on apps from Apple's App Store and around $11 billion on apps from Google's Play Store. Those are billions not millions, and that's 40 percent higher than last year.

This is a huge business, and it's growing and it's growing fast. There's nothing wrong with that, but what is wrong is if we don't have competition.

Users spend about 90 percent of their smartphone internet time on apps. Consumers cannot get the same functionality from a webpage as they can from an app.

So when you're tweeting, or browsing the web, or mapping your location, or looking at a newsfeed, or listening to music—you're almost always using an app. To put things in perspective, in the first three months of this year, Americans spent an average of more than four hours a day, Senator Lee, on mobile apps. Do you think you were higher or lower? Okay.

Practically all of the apps used by consumers today are either pre-installed on Apple devices or devices running Google's Android operating system, or downloaded from Apple's App Store or Google's Play Store, depending on the consumer's device.

Apps designed for the iPhone cannot run on an Android device—and Android apps cannot run on an Apple device. So there are two separate app ecosystems—Apple's and Google's, with each setting all the rules and extracting commissions.

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And consumers choose which ecosystem they want to use when they buy their smartphone—if they buy an iPhone, they are with Apple for as long as they use that phone. If they buy an Android phone, they are with Google for the life of that phone.

As consumers don't replace smartphones very often because they are so expensive, app developers who want to reach consumers on both types of phone must create two versions of their apps   one for Apple and one for Android.

And the only practical way for app developers to reach those customers is with the permission of Apple or Google.

Unless you are some kind of computer hacker, which we hope you're not, the only way to download an app onto your iPhone is through the Apple App Store   no other app stores are allowed and downloading apps directly from the internet to avoid the App Store, a process known as "sideloading," is prohibited by Apple. In every sense, it's what we call a "walled garden," and by design the App Store has a literal monopoly on the distribution of apps on Apple devices.

While Google does allow alternative app stores and sideloading on Android, as a practical matter, the overwhelming majority of app downloads take place on the Google Play Store, making it, by far, the dominant app store on Android devices.

Both Apple and Google maintain strict control over their app stores. They decide which apps can or cannot exist on their app stores and set the rules for how apps operate once they are downloaded. As a result, Apple and Google operate as "gatekeepers" with the power to decide how or whether apps can reach iPhone and Android users. And at the same time, they offer many apps that compete directly with those sold through their own app stores.

Of course, this gatekeeper power can and often is used to provide a secure environment in which legitimate apps can be distributed to consumers. But today, we will focus on how Apple and Google can use their power to 1. exclude or suppress apps that compete with their own products, and 2. charge excessive fees that affect competition in the app economy.

As I've said before, just because a company creates a successful, innovative business that consumers like, doesn't give it a free pass to harm competition or ignore our antitrust laws.

Both companies also offer their own apps that compete with the third-party apps in their app stores, including video streaming apps, music apps, payment apps, gaming apps, and more.

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In some cases, Apple and Google can build the functionality of a third-party app into their operating system or build an app that is essentially a copy—Apple's App Store terms explicitly allow them to imitate any of the apps in their store, a practice known as "Sherlocking," which can render the original competing app obsolete.

Both companies also compel app providers that sell digital content or services in their app to use their payment process services. The companies then charge commissions of up to 30 percent, that's right, 30 percent, for such "in-app purchases." The apps are not allowed, and this is something that people don't know, to inform customers of or link to payment methods outside of the app to avoid the commission. In other words, consumers are banned from finding out, if they're in the app, that they have a cheaper alternative.

Of course, we acknowledge that most apps are not subject to these commissions. Most small developers and those that offer apps that sell "physical goods or services that will be consumed outside the app" – like rides on Uber – don't pay the commission. And they are probably pretty happy about that. That's fine.

But focusing high commissions on apps that charge for digital services used on the iPhone ensures that the commissions target on the very apps that are most likely to compete directly with Apple's and Google's own offerings. And some affected app developers are complaining that being forced to use these payment services with their high commissions are crippling their ability to compete with Apple and Google products on equal terms.

So just because most developers are happy because they aren't paying commissions, that's fine, it doesn't inoculate the app stores from the antitrust laws if they are harming competition with other developers.

Some developers have also raised concerns about the app stores' ability to demote their placement in app store rankings; to banish their apps from the app store; to withhold or delay approval of app updates, which can limit app functionality; and to set their own products as automatic defaults.

And when we talk about incentives, it's important to remember that the app stores aren't supporting businesses that just cover the cost of operating them. In 2020, consumers are estimated to have spent $72.3 billion in Apple's App Store and $38.6 billion Google's Play Store. Applying their standard commission rates to these amounts nets Apple and Google billions of dollars.

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These concerns have attracted the attention of enforcers in America and around the world. We have seen significant reports on this issue from governments in Europe and Australia, in addition to the House Antitrust Subcommittee's digital markets report. There have also been news reports of investigations by the Justice Department and state attorneys general into app store competition. And state lawmakers in Arizona, Massachusetts, North Dakota, my home state Minnesota, and other states have proposed legislation to regulate app stores.

And although we can and should use our existing antitrust laws to address these issues, we can also strengthen our laws, including with my bill, the Competition and Antitrust Law Enforcement Reform Act, and the exclusionary portions of that bill would be very helpful in taking on these cases. We also have to make sure the agencies have the resources to take on these complex matters, which have taken me a quite a few minutes to even get to the guts of explaining this, but I thought it was really important to do. But you can imagine if you're actually taking on the world's biggest companies that we've ever known in the world, you actually have to be able to have the resources to do that, so that is actually tied in with this, as are all antitrust matters before those agencies. They have to have the resources. They just can't do this with duct tape and band-aids.

We all appreciate app stores and the roles that Apple and Google have played in helping to create many of the technologies that have defined our age. That's great. We're not angry about success. We simply want to make sure that capitalism keeps going in a strong, strong way that's fair to everyone, yes, but capitalism is about competition. It's about new products coming on. It's about new competitors emerging. This situation, to me, doesn't seem like that's happening when you have two companies really each dominating in different areas and where you have companies that are simply trying to do business in their own ecosystems or maybe with Apple and Google that are severely hampered from doing it.

So with that, I turn it over to Ranking Member Lee and I look forward to hearing from the witnesses.

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